

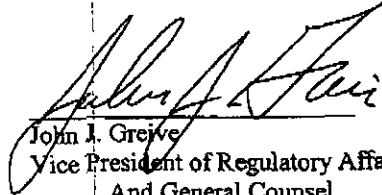
as unreliable and will undoubtedly share these opinions with friends, neighbors and other acquaintances. This will impair Lightyear's ability to attract new customers and retain its existing ones — even those who were not disconnected. The resentment toward Lightyear felt by these customers will not likely dissipate, even after an appeal of the Commission's rules is decided. Rather, the perception created by the disconnections forced by construing rule 9.5 as requiring disconnection will linger in the market long after the legality of the rules has been adjudicated.

36. It is highly unlikely that Lightyear will later be able to convince customers to return to Lightyear's service at some future time after disconnection. Customers disconnected by Lightyear will most likely believe that Lightyear is an unreliable provider due to their disconnection experience. Further, Lightyear's customers will immediately have to find a new provider of communications services. Many times the most advantageous pricing that a customer can acquire is in the form of a term commitment of at least a year, but in many cases of several years. Such term commitments generally require customers to pay substantial fees to terminate the contract early. For these reasons, it is highly unlikely that customers will return to Lightyear's service after disconnection.

37. Further, those customers that are disconnected will not be able to reach emergency services by dialing 911 in an emergency or to engage in non-emergency essential communication (such as children checking in with their parents, etc.) because they will have no phone service, at least for some period of time until they are able to arrange for other service. Thus, the risk that individual customers will not be able to reach an emergency operator in an emergency and that additional emergencies may be created will increase if the Commission forces Lightyear to disconnect service to customers.

38. If Lightyear is required to disconnect those customers where it can't provide E911 service in compliance with the Commission's rules, Lightyear will suffer irreparable harm to its business in the form of a significant loss of its customer base, loss of future financing, inability to fulfill its contracts as a customer of telecommunications carriers, loss of reputation and loss of the competitive advantage it has achieved over other providers of VoIP services.

I hereby affirm under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

  
John J. Greive  
Vice President of Regulatory Affairs  
And General Counsel  
Lightyear Network Solutions, LLC

Dated: October 21, 2005

Louisville, Kentucky 40223

## **DECLARATION OF JAMES R. ROSE**

1. My name is James R. Rose. I am over the age of 18 and competent to provide the testimony herein. I have personal knowledge of the facts set forth in this Declaration.

2. I am employed by i2 Telecom International, Inc. ("i2") as Chief Technology Officer. I have 27 years of experience in the telecommunication industry designing, engineering, building and managing voice network infrastructure to include analog, digital and packet throughout the US and Europe. I have held various Sr. Engineering and Sr. management positions during this time

3. The purpose of this Declaration is to explain why, in the absence of a stay, i2 will be immediately and irreparably harmed by enforcement of the Voice over Internet Protocol ("VoIP") "E911" requirements established in the Commission's First Report and Order in WC Docket Nos. 04-36 and 05-196 ("*Order*"). In particular, I will describe i2's efforts to comply with the customer notification and affirmative acknowledgement requirements of Rule 9.5. I will also describe i2's attempts to comply with the requirement of routing all 911 calls to the appropriate public safety agency as of November 28, 2005.

4. As I will show, full compliance with this rule is impossible for reasons outside the Company's control; therefore, if the rule is not stayed, i2 will be unable to continue lawfully to provide service to approximately 90% of its customers. It is very unlikely that customers will voluntarily return to i2's service later, even if the FCC's rules are later vacated, after having had that service disconnected.

**A. i2's VoIP Services**

5. i2's VoIP service is an Internet application that enables its customers to communicate by voice over the Internet, both with other users of the service and with users of ordinary telephones on the public switched telephone network. Subscribers can access i2's network via a software application loaded on a computer that has access to any access point that provides user with high speed broadband internet connectivity, to include dedicated or WiFi, or via an IAD connected to any high speed broadband internet access point.

6. i2's VoIP service is portable; that is, so long as an i2 customer has access to a high speed broadband Internet access line, the i2 customer can make use of the service anywhere in the United States or from any high speed broadband Internet connection anywhere in the world. The customer does not have to obtain their Internet access from i2.

7. Also, i2's service allows customers in one geographic area to use telephone numbers that are associated with distant or non-local areas. For example, an i2 customer who lives in Washington, DC may have a telephone number assigned from Los Angeles, California; and that same customer could use the service from any location in the world where there is broadband Internet access.

8. By July 29, 2005, the Commission's *Order* requires providers of "interconnected two way VoIP services" like i2 to: 1) "specifically advise every subscriber, both new and existing, prominently and in plain language, of the circumstances under which E911 service may not be available through the interconnected VoIP service or may be in some way limited by comparison to traditional E911 service;"<sup>1</sup> 2) "obtain and keep a record of affirmative acknowledgement by every subscriber, both new and existing, of having received and understood

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<sup>1</sup> *Order* at ¶ 48.

this advisory;”<sup>2</sup> and 3) distribute to all existing and new subscribers “warning stickers and other appropriate labels” stating that E911 service “may be limited or not available.”<sup>3</sup>

9. Within 120 days after the effective date (by November 28), all interconnected VoIP providers (“IVPs”) must: 1) “as a condition of providing that service to a consumer,” provide that consumer with E911 service as required by the *Order*;<sup>4</sup> (2) “transmit all 911 calls, as well as ANI [Automatic Number Identification] and the caller’s Registered Location for each call, to the PSAP, designated statewide default answering point, or appropriate local emergency authority that serves the caller’s Registered Location ...;”<sup>5</sup> 3) route “[a]ll 911 calls ... through the use of ANI and, if necessary, pseudo-ANI, via the dedicated Wireline E911 Network”;<sup>6</sup> (4) make the Registered Location “available to the appropriate PSAP, designated statewide default answering point, or appropriate local emergency authority from or through the appropriate automatic location information (ALI) database;”<sup>7</sup> (5) “[o]btain from each customer, prior to the initiation of service, the physical location at which the service will first be utilized; (6) “[p]rovide ... end users one or more methods of updating their Registered Location ... [which] must allow

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<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at ¶ 47.

<sup>5</sup> *Id.* App. B at 47, *to be codified at* 47 C.F.R. § 9.5(b)(2).

<sup>6</sup> *Id.* ANI is defined as “Automatic Number Identification.” Pseudo Automatic Number Identification (“Pseudo-ANI”) means “[a] number, consisting of the same number of digits as ANI, that is not a North American Numbering Plan telephone directory number and may be used in place of an ANI to convey special meaning. The special meaning assigned to the pseudo-ANI is determined by agreements, as necessary, between the system originating the call, intermediate systems handling and routing the call, and the destination system.”

<sup>7</sup> *Id.* App. B at 47, *to be codified at* 47 C.F.R. § 9.5(b)(4).

an end user to update the Registered Location at will and in a timely manner”; and (7) “submit a letter to the Commission detailing ... compliance with [the 120-day requirements].”<sup>8</sup>

10. The Commission’s *Order* explicitly prohibits interconnected VoIP providers from allowing customers to “opt-out” of E911 services or requiring customers to opt-in to E911 services. Therefore, i2 cannot limit its 911 service to particular geographic areas in which it markets the service – *even if a customer agrees to this limitation*. Instead, interconnected VoIP service providers must ensure that E911 service is available from any location where the customer may roam. The only option apparently available to a provider whose customer tries to register a service location at which the provider cannot comply with the E911 requirements is to disconnect that customer’s VoIP service completely.

11. Due to the portable nature of the VoIP services offered by i2, coupled with the requirements set out in the *Order*, the Commission’s rules effectively require i2 to have VoIP E911 capability throughout the entire United States, its territories and possessions by November 28, 2005, because an i2 customers may use the service from any location where broadband Internet access is available.

12. Also, in many instances, the existing wireline E911 network cannot process calls originated from devices that allows for the use of non-local telephone numbers. Because i2’s service allows 911 calls from customers whose telephone number is not “local” to their actual geographic location, these calls cannot be processed without additional steps. The same problem exists for wireless telephones. In order to resolve this issue, pseudo-telephone numbers are assigned to the VoIP call when an emergency call is placed. The use of pseudo-numbers requires

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<sup>8</sup> *Id.* at ¶ 79; *Id.* App. B at 47, *to be codified at* 47 C.F.R. § 9.5(b)(2). Movants are complying with, and do not seek a stay of, requirements (5), (6), and (7).

an entity to administer such numbering resources. In certain parts of the country, the Regional Bell Operating Company ("RBOC") has assumed that role. But in other areas the entity responsible for assigning such resources has not been established. In these areas, it is highly unlikely that i2 will have access to the numbering resources it needs to implement an E911 solution for non-native numbers by November 28, 2005.

**B. i2's Efforts to Comply With the Commission's Customer Notification and Affirmative Acknowledgement Rules**

13. Since the Commission adopted the *Order*, i2 has devoted significant resources to attempt to comply with the Commission's new rules, and has changed its operating procedures as required by those rules.

14. i2 has changed its new customer subscription process to comply with the customer notice and registered location requirements in the *Order*. i2 also revised its terms of service to reflect its current 911 offerings, and all new customers must agree to the revised terms of service to complete the subscription process. i2 developed a process to track and record the affirmative acknowledgements received back from customers.

15. i2 engaged in a massive campaign to inform its existing subscriber of the E911 limitations associated with its service, even though customers were advised of the limitations associated with E911 service at the time of initial sign up prior to the Commission's adoption of Rule 9.5.

16. i2 distributed its customer notification regarding 911 and E911 service limitations to all U.S. based customers on July 15, 2005 via e-mail. i2 notified customers that had not returned the affirmative acknowledgment again on July 18, 2005 via e-mail; on July 20, 2005 via U.S. Mail; on July 21, 2005 via e-mail; July 25 2005 via e-mail; July 27-2005 via U.S. Mail; July



29, 2005 via e-mail; August 2, 2005 via e-mail; August 4, 2005 via e-mail and August 8, 2005 via e-mail. Further, i2 has regularly called customers to tell them that they need to visit the i2 website to review the dialing notice and send in the forms (either via mail or via fax) acknowledging that they have received and understand the notice. i2 has continued its notification efforts for those customers that have not affirmatively responded to the original notices, including a notification sent on October 21, 2005.

17. i2 sent multiple e-mails, letters and voice messages to its subscribers in order to notify and to obtain affirmative acknowledgement from our customers that they understood the E911 limitations associated with the VoIP service. Additionally, i2 posted notices on areas of its website that customers use to manage their account informing users of the lack of 911 access associated with the service and would not allow users to continue with their transactions without providing affirmative acknowledgement.

18. As of October 21, 2005, i2 has received affirmative acknowledgement from 97.2% of its customers.

**C. i2's Efforts to Comply With the Commission's 120-Day Requirements**

19. i2 began its efforts to comply with the Commission's 120-day requirements by investigating what it would require in terms of resources and time to deploy an E911 solution nationwide.

20. i2 quickly determined that we did not have the resources, capital or time to create and deploy our own dedicated E911 network with a nationwide footprint.

21. To deploy an E911 solution that would comply with the Commission's *Order*, i2 would have to obtain certification in all 50 states, as well as the United States' territories and

possessions. i2 would then have to enter into interconnection agreements with the regional Bell operating companies, *i.e.*, BellSouth, Qwest, SBC and Verizon, as well as incumbent providers of local exchange service, in order to gain access to the selective routers that comprise the 911 system. It would be logistically impossible for i2 to contact, negotiate, and contract with all the necessary parties to implement and manage a nationwide network-based solution. Even if i2 had the capital and resources to engage in such an endeavor – which it does not – i2 would not be able to complete this process by November 28, 2005. Accordingly, it quickly became apparent to i2 that the Company would have to rely on the efforts of third-party solution providers.

22. i2 contacted several third parties offering limited geographic solutions that would comply with the Commission's rules. i2 considered third-party solutions offered by TCS, Intrado, and Level (3). There are a number of limitations associated with each proposed solution. For example, two providers were only offering solution that worked within their service footprint and did not work with non-local telephone numbers. Another provider was not offering call routing services for 911 calls, only database updates and verification services. It quickly became apparent that none of these vendors had a complete solution.

23. After months of discussion with various providers concerning their proposed E911 solutions, i2 contracted with a certain third-party solution provider in September, 2005, to provide an E911 solution by November 28, 2005. While the solution needed was identified quickly by i2 and the third party provider, the two parties faced delays in reaching agreement terms for that solution due to the vagueness of the *Order*, and the parties' willingness to commit to such vague solutions.

24. The third-party solution provider's service will route 911 calls using the dedicated wireline E911 Network in certain markets, but will not comply with the *Order* in many markets

by November 28, 2005. The network solution is currently being installed by i2 and the third party solution provider. Installation is being affected, however, by delivery dates, testing, and systems interoperability testing. i2 is unaware of any third party provider that is offering a solution that will cover the entire United States (including Alaska and Hawaii), including territories and possessions, by November 28, 2005. In fact, i2 is unaware of any third party provider offer a solution for just the continental United States.

25. Based on representations made by i2's third party solution provider, i2 has determined that it may be possible to provide E911 services in compliance with the Commission's rules in the majority of the top 20 Metropolitan Statistical Areas ("MSAs") in the continental United States and a few areas outside of the top 20 MSAs by November 28, 2005. However, i2 will not have a nomadic solution in place if the customer takes the VoIP service to a location in some markets within the top 20 MSAs and any location outside of these top 20 MSAs.

26. At this time, i2 does not know when it will be possible to provide E911 services throughout the United States as i2 is wholly reliant on a third-party solution provider, as well as on the third parties that the solution provider relies on to provide service like incumbent providers of telephone service, PSAPs, and other entities that must cooperate and work with Intrado to interconnect with the existing emergency services network ("Wireline E911 Network").

27. A major impediment in adopting an E911 solution that will comply with the Commission's mandate is the vagueness associated with the Commission's E911 rules that makes it impossible for i2 to know whether the contracts we are entering into will actually satisfy the Commission's rules.

28. The third-party solution provider will not certify that its services will comply with the Commission's *Order*. Currently, Intrado is forecasting that it will not have a solution compliant with the *Order* in place throughout the continental United States until the end of 2006.

29. Even if i2's third-party solution provider does not have a solution in a particular market, and another company does, i2's third-party solution provider insists on contract terms that require i2 to give its solution provider 90 days to implement a solution prior to using the services of the other company. Should i2's solution provider fail to meet the 90-day deadline, i2 may use a different party; but, as soon as i2's solution provider deploys a solution in that particular market, i2 must migrate to that solution. This clause effectively bars i2 from contracting with another provider, because other providers are likely to insist on their own minimum term commitments.

**D. Consequences of i2's Inability to Comply with Rule 9.5(b) and (c)**

30. I understand that section 9.5 of the Commission's rules, with which i2 must comply effective on November 28, 2005, will require i2 to provide every existing subscriber with E911. Since full compliance is impossible as we understand the rules, by November 28, 2005, i2 will either have to disconnect those customers who we can no longer serve in conformance with the Commission's rules or suffer whatever enforcement actions and penalties the Commission decides to impose.

31. I also understand that the Commission can impose substantial monetary penalties for noncompliance with its regulations. The possible regulatory violations by i2 and the Commission's possible imposition of fines against i2 for violating regulations that are impossible to comply with would have immeasurable consequences that could not be remedied by monetary

compensation. i2's goodwill and business reputation would be severely damaged. i2 will take whatever steps are needed to avoid being in violation of the rules, even if the Commission were to insist that it must disconnect customers to do so.

32. If i2 is forced to disconnect customers to comply with Rule 9.5, it may also endanger the safety of those customers that have their service turned off, thereby exposing both the customers and i2 to additional harm. Customers who have their service turned off by i2 will certainly blame i2, not the Commission, for the inconvenience and expense they suffer from having their phone service shut off. Customers will perceive i2 as unreliable and will undoubtedly share these opinions with friends, neighbors and other acquaintances. This will impair i2's ability to attract new customers and retain its existing ones — even those who were not disconnected. The resentment toward i2 felt by these customers will not likely dissipate, even after an appeal of the Commission's rules is decided. Rather, the perception created by the disconnections forced by construing rule 9.5 as requiring disconnection will linger in the market long after the legality of the rules has been adjudicated.

33. It is highly unlikely that i2 will later be able to convince customers to return to i2's service at some future time after disconnection. Customers disconnected by i2 will most likely believe that i2 is an unreliable provider due to their disconnection experience. Further, i2's customers will immediately have to find a new provider of communications services. Many times the most advantageous pricing that a customer can acquire is in the form of a term commitment of at least a year, but in many cases of several years. Such term commitments generally require customers to pay substantial fees to terminate the contract early. For these reasons, it is highly unlikely that customers will return to i2's service after disconnection.

34. Further, those customers that are disconnected will not be able to reach emergency services by dialing 911 in an emergency or to engage in non-emergency essential communication (such as children checking in with their parents, etc.) because they will have no phone service, at least for some period of time until they are able to arrange for other service. Thus, the risk that individual customers will not be able to reach an emergency operator in an emergency and that additional emergencies may be created will increase if the Commission forces i2 to disconnect service to customers.

35. If i2 is required to disconnect those customers where it can't provide E911 service in compliance with the Commission's rules, i2 will suffer irreparable harm to its business in the form of a significant loss of its customer base, loss of future financing, inability to fulfill its contracts as a customer of telecommunications carriers, loss of reputation and loss of the competitive advantage it has achieved over other providers of VoIP services.

I hereby affirm under penalty of perjury that the foregoing is true and correct to the best of my knowledge.



James R. Rose  
Chief Technology Officer  
i2 Telecom International, Inc.

Dated: October 21, 2005  
Atlanta, Georgia